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*Counsel for Plaintiffs and the Proposed Class***UNITED STATES DISTRICT COURT****CENTRAL DISTRICT OF CALIFORNIA****WESTERN DIVISION****EDCV 12-1983** TJH/OPx)

ADAM PARKER and ANDREW
 HARBUT, on behalf of themselves and all
 others similarly situated,

Plaintiffs,

v.

MONAVIE, INC.; MONAVIE LLC; and
 JUICEY ACAI, LLC,

Defendants.

Case No. _____

CLASS ACTION COMPLAINT**DEMAND FOR JURY TRIAL**

1 Plaintiffs Adam Parker and Andrew Harbut (“Plaintiffs”), on behalf of
2 themselves and all others similarly situated (the “Class,” further defined herein),
3 allege the following against defendants MonaVie, Inc. and MonaVie LLC (together,
4 “MonaVie”), along with Juicy Acai, LLC (“Juicy Acai”) (collectively with
5 MonaVie, “Defendants”), upon personal knowledge as to themselves and their own
6 acts, and as to all other matters upon information and belief, based upon, *inter alia*,
7 the investigation made by their attorneys, as follows:

8 **INTRODUCTION**

9 1. Defendants and other beverage distributors market and sell MonaVie açai
10 juice products (the “Products,” further defined herein) through a multi-level marketing
11 scheme that disseminates false and misleading representations that the Products
12 provide certain health benefits, as determined by “millions of dollars in clinical
13 research.” Unfortunately for consumers, Defendants knowingly fabricate such
14 statements with no legitimate basis and overcharge consumers for fruit juice that
15 provides no more health benefits than other, significantly less expensive fruit juices.

16 2. The Products addressed herein include MonaVie Original, MonaVie
17 Essential, MonaVie Active, MonaVie Pulse, MonaVie (M)mūn, MonaVie Kosher, and
18 MonaVie E.

19 3. The Products cost at least \$39.00 for a bottle of approximately 25 ounces,
20 and consumers can purchase them through MonaVie’s website,
21 <http://www.monavie.com>, and MonaVie’s distributors, including Defendant Juicy
22 Acai.

23 4. Defendants’ scheme for hawking this overpriced fruit juice is almost
24 identical to that of another “health” drink product called Royal Tongan Limu, which
25 was manufactured and distributed by multi-level marketing company Dynamic
26 Essentials. The Food and Drug Administration (“FDA”) forced Dynamic Essentials to
27 cease and desist operations as a result of the unsubstantiated claims of therapeutic
28 benefits of Royal Tongan Limu espoused by Dynamic Essentials and its distributors.

1 5. After the FDA caused Dynamic Essentials to shut down, Dallin Larsen –
2 Dynamic Essentials’s Vice President and the creator of the Royal Tongan Limu juice
3 – moved on to create MonaVie and the Products and marketing scheme at issue here.

4 6. Contrary to the misrepresentations made by Defendants, MonaVie is
5 aware that no reliable clinical studies exist regarding açai juice products. Indeed,
6 according to an internal company document authored by Ralph Carson – the purported
7 creator of MonaVie’s açai juice and one-time “Chief Science Officer” – the juice is
8 “expensive flavored water. Any claims made are purely hypothetical, unsubstantiated
9 and, quite frankly, bogus.”¹

10 7. Furthermore, the FDA admonished MonaVie in 2007 for some of the
11 same health claims that Defendants still make.² In particular, the FDA warned that
12 claims about the ability of MonaVie’s products to cure, mitigate, treat, or prevent
13 disease, even though such claims were unsubstantiated by any valid medical research,
14 were serious violations of the Federal Food, Drug, and Cosmetic Act (FFDCA) and
15 the applicable regulations promulgated pursuant to the FFDCA.

16 8. Nevertheless, MonaVie makes claims on its website that its Products can
17 “aid [one’s] body in the fight against aging” and provide unique benefits to
18 consumers’ immune systems, hearts, and joints.

19 9. As further detailed below, Plaintiffs purchased the Products in reliance
20 upon such false, unfair, deceptive, and/or unconscionable representations, which
21 Plaintiffs saw and heard through Defendants’ mass marketing and advertising
22

23 ¹ Tom Harvey, *Utah juice companies offer few prospects*, The Salt Lake Tribune, Dec.
24 13, 2011, [http://www.sltrib.com/sltrib/mobile/53061545-90/monavie-company-](http://www.sltrib.com/sltrib/mobile/53061545-90/monavie-company-distributors-percent.html.csp)
25 [distributors-percent.html.csp](http://www.sltrib.com/sltrib/mobile/53061545-90/monavie-company-distributors-percent.html.csp).

26 ² See FDA Warning Letter to Kevin Vokes and MonaVie (July 6, 2007),
27 [http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation](http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/EnforcementActivitiesbyFDA/CyberLetters/ucm056937.pdf)
28 [/EnforcementActivitiesbyFDA/CyberLetters/ucm056937.pdf](http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/EnforcementActivitiesbyFDA/CyberLetters/ucm056937.pdf).

1 campaign. If Plaintiffs had known that Defendants' representations were false and
2 misleading and that they were essentially paying for overpriced fruit juice, Plaintiffs
3 would not have purchased the Products.

4 10. The purpose of this lawsuit is to redress the harm done to consumers as a
5 result of Defendants' fraudulent and deceptive practices.

6 **JURISDICTION AND VENUE**

7 11. This Court has original jurisdiction over this class action under 28 U.S.C.
8 § 1332(d), which explicitly provides for the original jurisdiction of the Federal Courts
9 in any class action where any member of the plaintiff class is a citizen of a State
10 different from the State of citizenship of any defendant, and in which the matter in
11 controversy exceeds the sum of \$5,000,000, exclusive of interest and costs. Plaintiff
12 Parker is a citizen of California, and Plaintiff Harbut is a citizen of Missouri, whereas
13 defendants MonaVie, Inc. and MonaVie LLC are citizens of Utah, and defendant
14 Juicy Acai, LLC is a citizen of California. Therefore, diversity of citizenship exists
15 under CAFA.

16 12. Venue is proper in this District under 28 U.S.C. § 1391(a). Plaintiff
17 Parker purchased the Product in this District. Additionally, Defendant Juicy Acai
18 maintains its headquarters within this District, and a substantial part of the events or
19 omissions giving rise to Plaintiff Harbut's claims occurred within this District.

20 **PARTIES**

21 13. Plaintiff Adam Parker is an individual consumer who, at all times
22 relevant to this lawsuit and the allegations contained herein, was a resident of
23 Thousand Oaks, California. Mr. Parker purchased MonaVie (M)mūn from a retail
24 pharmacy in Newbury Park, California, on July 1, 2012. The purchase was for
25 approximately \$24.95. Prior to purchasing the MonaVie Product, Mr. Parker saw,
26 heard, and relied upon advertisements, representations, and statements made by
27 MonaVie on the product's bottle about the alleged health benefits of drinking the
28 Products. Mr. Parker would not have purchased the Product had he known that the

1 representations made by MonaVie were false and misleading. As a result, Mr. Parker
2 suffered injury in fact and lost money due to MonaVie's violations of the law
3 described herein. Additionally, despite consuming the (M)mūn product, Mr. Parker
4 experienced none of the dramatic improvements in his health that MonaVie
5 represented would occur from consuming the product.

6 14. Plaintiff Andrew Harbut is an individual consumer who, at all times
7 relevant to this lawsuit and the allegations contained herein, was a resident of
8 Missouri. Mr. Harbut made an online purchase of MonaVie (M)mūn from Defendant
9 Juicy Acai, LLC on September 29, 2011. The purchase was in the amount of \$42.45.
10 The item was shipped to Mr. Harbut at his home in St. Louis, Missouri. Prior to
11 purchasing the MonaVie Product, Mr. Harbut saw, heard, and relied upon
12 advertisements, representations, and statements made by Defendants and other
13 members of the MonaVie enterprise about the alleged health benefits of drinking the
14 Products. Mr. Harbut would not have purchased the Product had he known that the
15 representations made by Defendants were false and misleading. As a result, Mr.
16 Harbut suffered injury in fact and lost money due to Defendants' violations of the law
17 described herein. Additionally, despite consuming the (M)mūn product, Mr. Harbut
18 experienced none of the dramatic improvements in his health that Defendants
19 represented would occur from consuming the product.

20 15. Defendant MonaVie, Inc. is a Utah corporation with its principal place of
21 business at 10855 South River Front Parkway, Suite 100, South Jordan, Utah 84095.
22 MonaVie, Inc. is in the business of advertising, selling, and distributing the MonaVie
23 Products and has been so engaged at all times relevant to the allegations contained
24 herein.

25 16. Defendant MonaVie LLC is a limited liability company organized under
26 the laws of the state of Delaware with its principal place of business at 10855 South
27 River Front Parkway, Suite 100, South Jordan, Utah 84095. MonaVie LLC is in the
28 business of advertising, selling, and distributing the MonaVie Products and has been

1 so engaged at all times relevant to the allegations contained herein. MonaVie LLC
2 reportedly generated more than \$2 billion in revenue from 2005 to 2010, according to
3 its CEO, Dallin Larsen.³

4 17. Defendant Juicy Acai, LLC is a limited liability company organized
5 under the laws of the state of California with its principal place of business at 20652
6 Gelman Drive, Riverside, California 92508. Juicy Acai, LLC distributes in the
7 business of introducing and selling the MonaVie Products online in the United States
8 and internationally and has been so engaged at all times relevant to the allegations
9 contained herein.

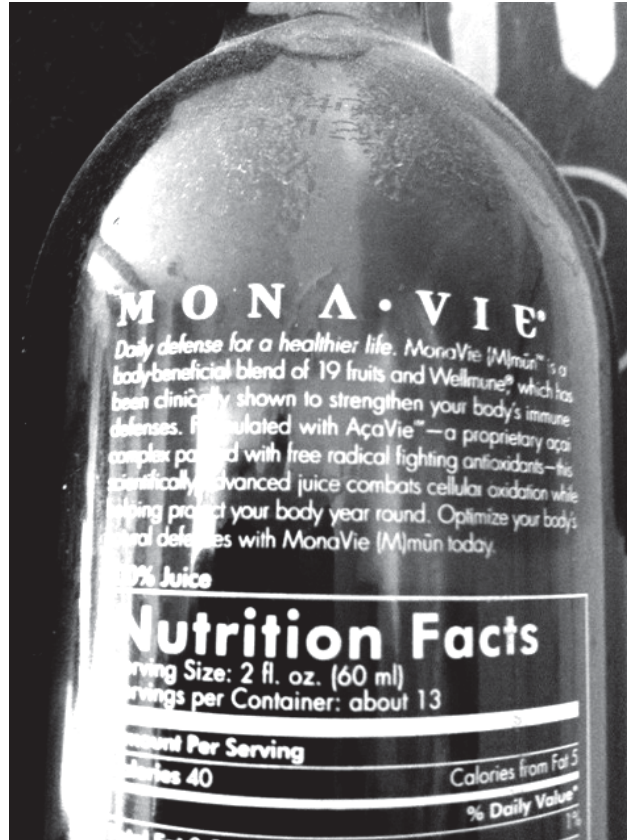
10 **COMMON FACTUAL ALLEGATIONS**

11 **False Immune System Claims**

12 18. MonaVie makes false and misleading representations on the labels of its
13 Products. For example, as seen below in a picture of one of Plaintiff Harbut's bottles
14 of MonaVie (M)mūn, the bottle has the following claim on it:

15 Daily defense for a healthier life. MonaVie (M)mūn™ is a body-
16 beneficial blend of 19 fruits and Wellmune®, which has been
17 clinically shown to strengthen your body's immune defenses.
18 Formulated with AçaVie™ – a proprietary açai complex packed
19 with free radical fighting antioxidants – this scientifically
20 advanced juice combats cellular oxidation while helping protect
21 your body year round. Optimize your body's natural defenses
22 with MonaVie (M)mūn today.

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24
25
26 ³ See Tom Harvey, *Utah juice companies offer few prospects*, The Salt Lake Tribune,
27 Dec. 13, 2011, <http://www.sltrib.com/sltrib/mobile/53061545-90/monavie-company-distributors-percent.html.csp>.
28



19. Defendant Juicy Acai mirrors this language on its website.⁴

20. These representations on the Products and on distributor websites, including the name of the (M)mūn Product, which is pronounced “immune,” convey to consumers that the Products can provide certain health benefits.

21. Unfortunately for consumers, antioxidant supplementation can have *adverse health effects*. For this reason, the Harvard Medical School recently advised consumers: “*Do not take antioxidant supplements.*”⁵

22. Moreover, MonaVie and its distributors encourage daily consumption of the Products beyond one serving a day. Therefore, even supposing the Products do

⁴ http://juicyacai.com/product_info.php?products_id=81 (last visited June 25, 2012).

⁵ Harvard Medical School, *Supplements: A Scorecard*, Harvard Men’s Health Watch, Apr. 2012, at 2 (emphasis added).

1 provide some sort of benefit to consumers' immune systems, the amount of
2 consumption recommended by Defendants could be harmful because an overactive
3 immune system attacks the body's own healthy tissues.

4 23. For this reason, the Federal Trade Commission ("FTC") and the FDA
5 have sought to put a halt to such claims. As discussed above, the FDA sent a warning
6 letter to MonaVie and one of its distributors in 2007 regarding unauthorized
7 representations about purported health benefits.

8 24. In 2008, the FTC settled a lawsuit against the makers of Airborne, who
9 agreed to pay up to \$30 million in regard to claims that their Airborne products could
10 help treat the common cold when, in reality, the products were just overpriced, run-of-
11 the-mill vitamin pills.⁶ Similarly to how Defendants market the MonaVie Products,
12 marketing materials for Airborne touted it as a unique formula of "Herbal Extracts,
13 Antioxidants, Electrolytes, and Amino Acids" that offered protection against illness.⁷

14 25. In July 2009, the FTC announced that national pharmacy chain Rite Aid
15 Corporation had agreed to pay \$500,000 to settle FTC charges regarding false and
16 misleading claims that its "Germ Defense" tablets and lozenges could prevent and
17 treat colds and the flu or reduce the severity and duration of illness.⁸

18 26. In September 2009, the FTC announced that national retailer CVS
19 Pharmacy Inc. had agreed to pay \$2.8 million to settle FTC charges regarding false
20 and misleading claims that its "AirShield" dietary supplements could prevent colds,
21 fight germs, and boost one's immune system.⁹

22
23
24 ⁶ See <http://www.ftc.gov/opa/2008/08/airborne.shtm>.

25 ⁷ See, e.g., <http://www.ftc.gov/os/caselist/0723183/080814airbornecomplaint.pdf> 34.

26 ⁸ See <http://www.ftc.gov/opa/2009/07/riteaide.shtm>.

27 ⁹ See <http://www.ftc.gov/opa/2009/09/cvs.shtm>.

27. In March 2010, national pharmacy chain Walgreens agreed to pay nearly \$6 million to settle FTC charges regarding false and misleading claims that its “Wal-Born” products – a line of dietary supplements similar to the Airborne cold-and-flu treatment – could prevent colds, fight germs, and boost one’s immune system.¹⁰

28. Despite all these cases and the FDA’s specific admonishment regarding the marketing of MonaVie’s products, MonaVie and its distributors continue to market and sell the MonaVie Products as having health and medicinal benefits that they do not have, and Defendants make such representations knowing that they have insufficient evidence to support them.

29. Distributors clearly take their cues from MonaVie itself, though, which has been sued before for its false and misleading representations.¹¹ MonaVie’s deceptive representations, as detailed herein, encourage even more egregious representations by its distributors.

30. Despite knowing that its distributors, including Defendant Juicy Acai, were engaging in or planned to engage in the violations of law described in this Complaint, MonaVie facilitated the commission of those unlawful acts. MonaVie intended to and did encourage, facilitate, or assist in the commission of the unlawful acts and thereby aided and abetted its distributors, including Defendant Juicy Acai, in the unlawful conduct.

False and Deceptive Use of the Oxygen Radical Absorbance Capacity Scale

31. On its website, MonaVie emphasizes the “Oxygen Radical Absorbance Capacity” (“ORAC”) value of its Products to make health benefit claims, but such claims are misleading and/or medically, statistically, and scientifically unsound.

¹⁰ See <http://www.ftc.gov/opa/2010/03/walgreens.shtm>.

¹¹ See, e.g., *Oliver v. Mona Vie, Inc.*, No. 11-cv-04125 (W.D. Ark.).

32. ORAC is determined by a laboratory analysis that measures the total antioxidant power – *i.e.*, ability to neutralize oxygen free radicals – of foods and other chemical substances. ORAC testing is a way to measure how many oxygen radicals a specific food can absorb and, thereby, neutralize. The more oxygen radicals a food can absorb, the higher its ORAC “score.”

33. MonaVie represents that the “açai berry is the crown jewel of the MonaVie blend. When properly freeze-dried, açai boasts an ORAC score higher than that of any other fruit or vegetable tested to date, based on available USDA data.”¹²

34. Similarly, on its website, MonaVie states that “freeze-dried Acai and Jucara are far and away more ORAC rich than many dehydrated fruits and vegetables.”¹³ Directly following a chart demonstrating this representation, the website then states:

Insight: MonaVie’s premier juice blends contain powerful nutrients that aid your body in the fight against aging and other symptoms of oxidative stress. In fact, just four ounces provide you with the antioxidant capacity of approximately 13 servings of common fruits and vegetables.¹⁴

35. MonaVie’s emphasis on ORAC is misleading, in part because there is no industry standard for measuring ORAC scores. Furthermore, different growing and harvesting conditions, including the season and temperature, also influence the ORAC

¹² See, e.g., MONAVIE AND MONAVIE GEL, PRODUCT INFORMATION PAGE, available at https://www.monavievo.com/corporate/documents/MonaVie%20Original%20PIP_4-14-08.pdf.

¹³ MonaVie Business Intelligence, *MBI – What does ORAC Mean?*, Apr. 16, 2012, <http://www.monavie.com/news/view/mbi--what-does-orac-mean->.

¹⁴ *Id.*

1 score of a particular plant by as much as fourfold. The ORAC score can be influenced
2 by how the plant material is dealt with – for instance, cooking, freezing, and storage.

3 36. When comparing ORAC data, care must be taken to ensure that the units
4 and food being compared are similar. Some evaluations compare ORAC units per
5 grams dry weight, others evaluate ORAC units' wet weight, and others compare
6 ORAC units per serving. Under each evaluation, different foods can appear to have
7 higher ORAC scores. Although a raisin has no more antioxidant potential than the
8 grape from which it was dried, raisins will appear to have a much higher ORAC value
9 per gram wet weight than grapes due to their reduced water content. Likewise, the
10 large water content of watermelons can make it appear as though they are very low in
11 antioxidants. In short, to accurately compare ORAC scores, one must consider the
12 amount of water in the food sample. The more water, the lower the ORAC score per
13 gram of that food. When something is freeze-dried, the water is removed. With all
14 the water weight taken out, a nutrient-dense power remains, resulting in relatively
15 high ORAC scores.

16 37. Furthermore, MonaVie's representations about ORAC are misleading
17 because there is a limit to the benefits a person may derive from antioxidant intake. A
18 significant increase in antioxidants of 15 to 20 percent is possible by increasing
19 consumption of fruits and vegetables, particularly those high in ORAC value.
20 However, MonaVie fails to disclaim that, in order to have a significant impact on
21 plasma and tissue antioxidant capacity, one can only meaningfully increase one's
22 daily intake by 3,000 to 5,000 ORAC units. Any greater amount is not efficacious
23 because the antioxidant capacity of the blood is tightly regulated. Thus, there is an
24 upper limit to the benefit that can be derived from antioxidants. Taking in 25,000
25 ORAC units at one time would be no more beneficial than taking in a fifth of that
26 amount; the excess is simply excreted by the kidneys.

27 38. While MonaVie uses ORAC scores to claim that four ounces of its
28 Products is the antioxidant equivalent of eating 13 common fruits, thereby giving the

1 perception that drinking four ounces of MonaVie is equivalent to eating 13 fruits,
2 MonaVie does not provide any disclaimer that would address the issues identified
3 above.

4 39. While MonaVie also references various studies on its website to back up
5 its claims, there are no reliable studies on commercially available products containing
6 açai. The studies MonaVie used are medically, statistically, and scientifically
7 unsound and, thereby, misleading.

8 40. In an independent study commissioned by *Men's Journal* to test various
9 fruit juices, MonaVie scored poorly on all criteria.¹⁵ The criteria were phenolic acids,
10 which purportedly help prevent cancer; anthocyanins, which purportedly help prevent
11 aging; Vitamin C, which purportedly aids in healing wounds; and beta-carotene,
12 which purportedly supports the immune system. MonaVie tested "extremely low in
13 anthocyanins and phenolics. Even apple juice (which also tested poorly) has more
14 phenolics than [MonaVie's] juice. Plus, MonaVie's vitamin C level was five times
15 lower than that of Welch's Grape Juice. That's not many nutrients, especially at \$1.20
16 a serving."¹⁶

17 41. MonaVie is just an expensive way to potentially get an amount of
18 antioxidants that a consumer could obtain from much cheaper sources. The MonaVie
19 Products sell for about \$40 for a 25.3 ounce bottle, or about \$4 to \$6 per day if the
20 Product is used as directed on the bottle. According to many published studies in the
21 National Institute of Medicine database on ORAC scores for all kinds of fruits and
22 vegetables, the ones that tend to be the highest include blueberries, raspberries, kale,
23

24 ¹⁵ See Jamie Beckman, *Superjuices on Trial*, *Men's Journal*, Dec. 4, 2008, available at
25 <http://archive.mensjournal.com/superjuices-on-trial>; see also *Men's Journal Proves*
26 *MonaVie Lacks Nutrition*, [http://www.juicescam.com/mens-journal-proves-monavie-](http://www.juicescam.com/mens-journal-proves-monavie-lacks-nutrition)
lacks-nutrition.

27 ¹⁶ *Id.*
28

1 spinach, prunes, and others, none of which cost nearly as much as MonaVie Products.
2 Organically grown blueberries, for instance, are more available, much less expensive,
3 and provide much fiber as well as plenty of antioxidant activity.

4 42. Furthermore, while the açai berry has a value of 161,400 units per 100
5 grams, a common household spice such as cinnamon has an ORAC value of 267,536
6 units per 100 grams, and ground cinnamon is much cheaper than açai juices even
7 though it has comparable health benefits.

8 43. Additionally, Wellmune, the main ingredient of (M)mün, is a registered
9 trademark of Biothera and is another name for WGP 3-6. Sixty pills of WGP 3-6 at
10 250 mg strength can be purchased for less than \$20 and can last for about two months,
11 which makes it a much cheaper alternative to the \$45 MonaVie bottle, which only
12 lasts one week.¹⁷

13 **Misleading Claims Based on Polyphenol Content**

14 44. Polyphenols are antioxidants in plants that many believe confer
15 substantial health benefits. They work by neutralizing free radicals, which are known
16 to cause a number of health problems. They may protect against some common health
17 problems and possibly certain effects of aging. They can also block the action of
18 enzymes that cancer needs for growth and can deactivate substances that promote the
19 growth of cancer.

20 45. Regarding the purported benefits of polyphenols in its Products,
21 MonaVie states the following:

22 Dedicated to unlocking, sharing, and protecting the earth's most
23 unique, health-giving resources, ***MonaVie combines science and***
24 ***nature to bring you the highest quality products possible.***

25
26 ¹⁷ See MonaVie Scam – MonaVie's Wellmune Is Cheaply Available,
27 <http://www.juicescam.com/monavies-wellmune-is-cheaply-available/> (last visited
28 June 25, 2012).

- Based upon millions of dollars in clinical research
- Supported by more than 60 independent scientific studies

* * *

Though your body inherently creates some antioxidants, these life-protecting phytonutrients are generally found in richly pigmented fruits and vegetables. *While thousands of antioxidants are found in nature, polyphenol and flavonoids (a class of polyphenols) are two of the most effective.*

* * *

Polyphenols are natural chemicals responsible for the color, flavor, and scent in fruits and vegetables. *Deeply pigmented berries such as açai are especially high in these antioxidant compounds.* Found mostly in the outer layer of fruits, polyphenols offer protection from harmful bacteria and ultraviolet light. *In humans, polyphenols protect your body from oxidative damage and support cardiovascular health.*¹⁸

46. Contrary to the scientific research to which MonaVie refers, there is no evidence that fruit polyphenols have antioxidant effects in the human body.¹⁹

47. Dr. Peter Hoffman, an associate professor at RIKILT, which is an institute of food safety at Wageningen University in the Netherlands, has spent thirty years researching polyphenols. Dr. Hoffman has concluded that polyphenols do not

¹⁸ <http://www.monavie.com/products/health-juices> (“Science” tab (emphasis added)).

¹⁹ See European Food Safety Authority, *Scientific Opinion on the substantiation of health claims related to various food(s)/food constituent(s) and protection of cells from premature aging, antioxidant activity, antioxidant content and antioxidant properties, and protection of DNA, proteins and lipids from oxidative damage pursuant to Article 13(1) of Regulation (EC) No 1924/2006*, EFSA Journal 2010, available at <http://www.efsa.europa.eu/en/scdocs/doc/1489.pdf> (discussing demonstrated effect *in vitro* but not *in vivo*); Shane Starling, *Veteran researcher: Polyphenols don’t work as antioxidants in vivo, but...*, Nutraingredients.com Newsletter, Jul. 12, 2010, available at <http://www.nutraingredients.com/Research/Veteran-researcher-Polyphenols-don-t-work-as-antioxidants-in-vivo-but>.

1 work as antioxidants when ingested in foods and supplements because the human
2 body makes enough of its own.²⁰

3 CLASS ALLEGATIONS

4 48. This action has been brought, and may be properly maintained, under
5 Federal Rule of Civil Procedure 23(a)(1)-(4), (b)(2), and (b)(3).

6 49. Plaintiffs brings this action as a class action, on behalf of themselves and
7 all others similarly situated, initially defined to be all persons who purchased the
8 MonaVie Products for the sole purpose of personal consumption from November 13,
9 2008, to the date of class certification (the “Class Period”). Excluded from the Class
10 are Defendants; members of the immediate families of the officers and directors of
11 Defendants; their legal representatives, heirs, successors, or assigns; any entity in
12 which they have or have had a controlling interest; and any entity that purchased
13 MonaVie Products for resale.

14 50. Plaintiff Parker also brings this action on behalf of a sub-class of
15 Californians who purchased MonaVie Products for the purpose of personal
16 consumption during the Class Period (the “California Sub-Class”).

17 51. Plaintiff Harbut also brings this action on behalf of a sub-class of
18 Missouri residents who purchased MonaVie Products for the purpose of personal
19 consumption during the Class Period (the “Missouri Sub-Class”).

20 52. **Numerosity** – Fed. R. Civ. P. 23(a)(1): The members of the Class are so
21 numerous and widely dispersed that joinder of them in one action is impractical. On
22 information and belief, thousands of individuals throughout the United States have
23 purchased MonaVie Products.

24 53. **Existence and Predominance of Common Questions of Law and Fact**
25 – Fed. R. Civ. P. 23(a)(2); 23(b)(3): Common questions of law and fact exist as to all

26 _____
27 ²⁰ *Id.*
28

members of the Class and predominate over any questions affecting only individual Class members. These common legal and factual questions include, but are not limited to, the following:

- a. whether MonaVie engaged in an overarching scheme between itself and its distributors to wrongfully profit by creating and approving false and/or misleading advertisements and statements about the health benefits of the Products;
- b. whether the purpose of the MonaVie scheme is to increase sales of the Products and, thus, the profits of all participants in the scheme;
- c. whether Defendants created false or misleading advertisements and/or statements about the Products that were made public;
- d. whether MonaVie concealed, suppressed, or omitted material information about the lack of proven benefits of the Products;
- e. whether MonaVie had a duty to be honest and forthright with consumers about the lack of proven benefits of the Products;
- f. whether MonaVie allowed its trademark or corporate identity to be used on false or misleading advertisements or statements about the Products;
- g. whether the representations about the content of the Products by Defendants were accurate; and
- h. whether the representations about the nutritional contents of the Products by Defendants are provable by generally accepted, laboratory-based scientific analysis.

54. **Typicality** – Fed. R. Civ. P. 23(a)(3): Plaintiffs’ claims are typical of the claims of the Class because Plaintiffs, like all other members of the Class, purchased the Products at a premium in a typical consumer setting and sustained damages from Defendants’ wrongful conduct. Thus, the claims of Plaintiffs and other members of

1 the Class are based on the same legal theories and arise from the same unlawful and
2 willful conduct.

3 55. **Adequacy of Representation** – Fed. R. Civ. P. 23(a)(4): Plaintiffs are
4 adequate representatives of the Class because their interests do not conflict with the
5 interests of the other Class members they seek to represent. Plaintiffs have retained
6 competent and experienced class action counsel who intend to vigorously prosecute
7 the action. The Class members’ interests will be fairly and adequately protected by
8 Plaintiffs and their counsel.

9 56. **Injunctive Relief** – Fed. R. Civ. P. 23(b)(2): The prerequisites to
10 maintaining a class action for injunctive or equitable relief are met as Defendants have
11 acted or refused to act on grounds generally applicable to the Class, thereby making
12 appropriate final injunctive or equitable relief with respect to the Class as a whole.

13 57. **Superiority** – A class action is superior to other available methods for
14 the fair and efficient adjudication of this controversy since joinder of all the Class
15 members is impracticable. The amount at stake for each consumer is such that
16 individual litigation would be inefficient and cost prohibitive. Additionally, the
17 adjudication of this controversy through a class action will avoid the possibility of
18 inconsistent and potentially conflicting adjudication of the claims asserted herein.
19 There will be no difficulty in the management of this action as a class action.

20 58. **Notice** – Plaintiffs and their counsel anticipate that notice to the proposed
21 Class will be effectuated by publication in major newspapers and on the Internet.

22 **CAUSES OF ACTION**

23 **COUNT I**

24 **(Fraud, Deceit, and Misrepresentation)**

25 59. Plaintiffs incorporate by reference and reallege all paragraphs previously
26 alleged herein.

27 60. Defendants, through their labeling, advertising, and marketing of the
28 Products, make representations and offers regarding the quality of their products as

described above. Defendants engaged and continue to engage in such fraudulent, misrepresentative, false, and/or deceptive acts with full knowledge that such acts were, and are, in fact, misrepresentative, false, or deceptive.

61. The aforementioned fraud, misrepresentations, deceptive, and/or false acts and omissions concern material facts that are essential to the analysis undertaken by Plaintiffs and those similarly situated in deciding whether to purchase Defendants' Products.

62. Plaintiffs and those similarly situated would have acted differently had they not been misled – *i.e.* they would not have paid money for the Products in the first place or they would not have paid the exorbitant premium for the Products.

63. Defendants have a duty to correct the misinformation they disseminate through their advertising of the Products. By not informing Plaintiffs and those similarly situated, Defendants breached this duty. Defendants also gained financially from and as a result of this breach.

64. By and through such fraud, deceit, misrepresentations, and/or omissions, Defendants intended to induce Plaintiffs and those similarly situated to alter their positions to their detriment.

65. Plaintiffs and those similarly situated justifiably and reasonably relied on Defendants' misrepresentations, and, as such, were damaged by Defendants.

66. As a direct and proximate result of Defendants' fraud, deceit, and/or misrepresentations, Plaintiffs and those similarly situated have suffered damages in an amount equal to the amount they paid for Defendants' Products. The exact amount of this difference will be proven at trial.

67. Defendants acted with intent to defraud or with reckless or negligent disregard of the rights of Plaintiffs and those similarly situated.

68. THEREFORE, Plaintiffs pray for relief as set forth below.

COUNT II

(Violation of Utah Consumer Sales Practices Act)

69. Plaintiffs incorporate by reference and reallege all paragraphs previously alleged herein.

70. At all relevant times, purchases by Plaintiffs and the other Class members of Defendants' Products constituted "consumer transactions" within the meaning of the Utah Consumer Sales Practices Act (UCSPA), Utah Code Ann. §§ 13-11-1 *et seq.*, because such purchases constituted sales of goods to persons (1) primarily for personal, family, or household purposes or (2) for purposes that related to a business opportunity that required expenditure of money or property by the purchaser and required the purchaser to perform personal services on a continuing basis and in which the purchaser had not been previously engaged.

71. At all relevant times, each Defendant was a "supplier," as that term is defined in Section 3, subsection 6 of the UCSPA, Utah Code Ann. § 13-11-3(6), as they were each and all sellers, lessors, assignors, offerors, brokers, or other persons who regularly solicited, engaged in, or enforced consumer transactions.

72. As described in detail above, Defendants uniformly misrepresented to Plaintiffs and each member of the Class, by means of advertising, marketing, and other promotional materials, including the Products' labeling and packaging, that the Products had particular health benefits that they did not.

73. Defendants have thereby – in their manufacturing, advertising, marketing, selling, and distribution of the Products – engaged in practices that constitute deception, fraud, false pretense, false promise, misrepresentation, unfair practice, and/or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce. Therefore, Defendants have engaged in unconscionable acts or practices in connection with a consumer transaction in violation of the UCSPA, Utah Code Ann. § 13-11-5.

1 80. At all relevant times, the MonaVie Products constituted “merchandise,”
2 as that term is defined by MMPA § 1(4), Mo. Rev. Stat. § 407.010(4), because the
3 Products are “objects, wares, goods, [or] commodities.”

4 81. At all relevant times, Defendants’ manufacturing, marketing, advertising,
5 sales and/or distribution of MonaVie Products met the definition of “sale” set forth by
6 MMPA § 1(6), Mo. Rev. Stat. § 407.010(6), because such manufacturing, marketing,
7 advertising, sales, and/or distribution constituted a “sale, lease, offer for sale or lease,
8 or attempt to sell or lease merchandise for cash or on credit.”

9 82. At all relevant times, Defendants’ manufacturing, marketing, advertising,
10 sales, and/or distribution of MonaVie Products met the definition of “advertisement”
11 set forth by MMPA § 1(1), Mo. Rev. Stat. § 407.010(1), because such manufacturing,
12 marketing, advertising, sales, and/or distribution constituted an “attempt by
13 publication, dissemination, solicitation, circulation, or any other means to induce,
14 directly or indirectly, any person to enter into any obligation or acquire any title or
15 interest in any merchandise.”

16 83. At all relevant times, Defendants’ sale or advertisement of the
17 merchandise at issue occurred in “trade” or “commerce,” as those terms are defined in
18 MMPA § 1(7), Mo. Rev. Stat. § 407.010(7), because such sale or advertisement
19 constituted “the advertising, offering for sale, sale, or distribution, or any combination
20 thereof, of any services and any property, tangible or intangible, real, personal, or
21 mixed, and any other article, commodity, or thing of value wherever situated.”
22 Additionally, such sale or advertisement directly or indirectly affected the people of
23 Missouri, which is conduct explicitly included in the definition of “[t]rade’ or
24 ‘commerce’” set forth in MMPA § 1(7).

25 84. As described in detail above, Defendants uniformly misrepresented to
26 Plaintiff Harbut and each member of the Missouri Sub-Class, by means of advertising,
27 marketing, and other promotional materials, and on the Products’ labeling and
28 packaging, that the Products had particular health benefits that they did not.

1 – have falsely advertised and marketed MonaVie Products by falsely claiming that the
2 Products had certain benefits that they do not have.

3 101. Plaintiff Parker and the other members of the California Sub-Class have
4 suffered injury in fact and have lost money or property as a result of Defendants’
5 violations of the FAL.

6 102. THEREFORE, Plaintiff Parker prays for relief as set forth below.

7 **COUNT VI**

8 **(Violation of California’s Unfair Competition Law)**

9 **(on behalf of California Sub-Class)**

10 103. Plaintiff Parker incorporates by reference and realleges all paragraphs
11 previously alleged herein.

12 104. By committing the acts and practices alleged herein, Defendants have
13 engaged in deceptive, unfair, and unlawful business practices – in violation of
14 California’s Unfair Competition Law (“UCL”), California Business and Professions
15 Code §§ 17200 *et seq.* – as to the Class as a whole.

16 105. Defendants have violated the UCL’s proscription against engaging in
17 unlawful conduct as a result of (i) their violations of the CLRA, Cal. Civ. Code
18 § 1770(a)(5), (a)(7), and (a)(9), as alleged above, and (ii) their violations of the FAL,
19 Cal. Bus. & Prof. Code §§ 17500 *et seq.*, as alleged above.

20 106. In addition, Defendants have violated the UCL’s proscription against
21 engaging in unlawful conduct as a result of their violations of the Sherman Law, Cal.
22 Health & Safety Code §§ 109875 *et seq.*, which forbids (1) misbranding of any food
23 or drug, *id.* §§ 10398 and 111445, and (2) manufacturing, selling, delivering, holding,
24 or offering for sale any food or drug that is misbranded or delivering or proffering
25 such for delivery, *id.* §§ 110770 and 111450.

26 107. The Sherman Law provides that a product is misbranded “if its labeling is
27 false or misleading in any particular.” *Id.* § 110660. In determining whether the
28 labeling or advertisement of a food, drug, device, or cosmetic is misleading, all

1 representations made or suggested by statement, word, design, device, sound, or any
2 combination of these, shall be taken into account. The extent that the labeling or
3 advertising fails to reveal facts concerning the food, drug, device, or cosmetic or
4 consequences of customary use of the food, drug, device, or cosmetic shall also be
5 considered. *Id.* § 110290.

6 108. Defendants' acts and practices described above also violate the UCL's
7 proscription against engaging in fraudulent conduct.

8 109. As more fully described above, Defendants' misleading marketing,
9 advertising, packaging, and labeling of the MonaVie Products is likely to deceive
10 reasonable consumers. Indeed, Plaintiff Parker and the other members of the
11 California Sub-Class were unquestionably deceived regarding the health benefits of
12 the Products, as Defendants' marketing, advertising, packaging, and labeling of the
13 Products misrepresent and/or omit the true facts concerning the benefits of the
14 Products. Said acts are fraudulent business practices.

15 110. Defendants' acts and practices described above also violate the UCL's
16 proscription against engaging in unfair conduct.

17 111. Plaintiff Parker and the other members of the California Sub-Class who
18 purchased MonaVie Products suffered a substantial injury by virtue of buying a
19 product they would not have purchased absent Defendants' unlawful, fraudulent, and
20 unfair marketing, advertising, packaging, and labeling or by paying an excessive
21 premium price for the unlawfully, fraudulently, and unfairly marketed, advertised,
22 packaged, and labeled Products.

23 112. There is no benefit to consumers or competition from deceptively
24 marketing and labeling dietary supplements. Indeed, the harm to consumers and
25 competition is substantial.

26 113. Plaintiff Parker and the other members of the California Sub-Class who
27 purchased MonaVie Products had no way of reasonably knowing that the Products
28

1 they purchased were not as marketed, advertised, packaged, and labeled. Thus, they
2 could not have reasonably avoided the injury each of them suffered.

3 114. The gravity of the consequences of Defendants' conduct as described
4 above outweighs any justification, motive, or reason therefore, particularly
5 considering the available legal alternatives that exist in the marketplace, and such
6 conduct is immoral, unethical, unscrupulous, offends established public policy, and/or
7 is substantially injurious to Plaintiff Parker and the other members of the California
8 Sub-Class.

9 115. Defendants' violations of the UCL continue to this day.

10 116. THEREFORE, Plaintiff Parker prays for relief as set forth below.

11 **COUNT VII**

12 **(Civil conspiracy in violation of Utah common law)**

13 117. Plaintiffs incorporate by reference and reallege all paragraphs previously
14 alleged herein.

15 118. Utah courts have held that Plaintiffs must show the following elements to
16 prove a claim of civil conspiracy: (1) a combination of two or more persons, (2) an
17 object to be accomplished, (3) a meeting of the minds on the object or course of
18 action, (4) one or more unlawful, overt acts, and (5) damages as a proximate result
19 thereof.

20 119. MonaVie conspired with Juicy Acai, along with its other distributors
21 and members of the MonaVie enterprise, to create a false and misleading belief that
22 the MonaVie Products were worth the exorbitant price paid for them with the goal of
23 selling as much of the Products as possible. This conspiracy was perpetuated by the
24 creation and use of false or misleading advertisements and statements related to the
25 content of the Products.

26 120. MonaVie actively encouraged such acts, was aware of them, implicitly
27 consented to them, and tacitly approved of them. Conspiracy may be inferred from
28

1 circumstantial evidence, including the nature of the act done, the relations of the
2 parties, and the interests of the alleged conspirators.

3 121. As a proximate result of Defendants' acts, Plaintiffs and the other Class
4 members suffered damage when they purchased the Products at a wrongfully inflated
5 prices.

6 122. THEREFORE, Plaintiffs pray for relief as set forth below.

7 **COUNT VIII**

8 **(Violation of the Magnuson-Moss Act)**

9 123. Plaintiffs incorporates by reference and realleges all paragraphs
10 previously alleged herein.

11 124. The Magnuson-Moss Warranty-Federal Trade Commission Improvement
12 Act (the "Magnuson-Moss Act"), 15 U.S.C. §§ 2301 *et seq.*, provides in section
13 110(d)(1) that "a consumer who is damaged by the failure of a supplier, warrantor, or
14 service contractor to comply with any obligation under [the Magnuson-Moss Act], or
15 under a written warranty, implied warranty, or service contract, may bring suit for
16 damages and other legal and equitable relief." 15 U.S.C. § 2310(d)(1).

17 125. At all relevant times, Plaintiffs and the other Class members were
18 "consumers," as that term is defined in 15 U.S.C. § 2301(3), because each was "a
19 buyer (other than for purposes of resale) of any consumer product, any person to
20 whom such product is transferred during the duration of an implied or written
21 warranty (or service contract) applicable to the product, and any other person who is
22 entitled by the terms of such warranty (or service contract) or under applicable State
23 law to enforce against the warrantor (or service contractor) the obligations of the
24 warranty (or service contract)."

25 126. At all relevant times, Defendants were "suppliers," as that term is defined
26 in 15 U.S.C. § 2301(4), because each was a "person engaged in the business of
27 making a consumer product directly or indirectly available to consumers." Although
28

1 the Magnuson-Moss Act does not define “person,” case law applies the Magnuson-
2 Moss Act to businesses as well as individuals.

3 127. At all relevant times, Defendants were “warrantors,” as that term is
4 defined in 15 U.S.C. § 2301(5), because each was a “supplier or other person who
5 gives or offers to give a written warranty or who is or may be obligated under an
6 implied warranty.”

7 128. The MonaVie Products purchased by Plaintiffs and the other Class
8 members were “consumer products,” as that term is defined in 15 U.S.C. § 2301(6),
9 because the MonaVie Products were “tangible personal property which is distributed
10 in commerce and which is normally used for personal, family, or household
11 purposes.”

12 129. By reason of Defendants’ breach of their express warranties regarding the
13 ability of their Products to strengthen the body’s immune system and aid the body in
14 fighting against aging and various diseases, Defendants have caused economic
15 damage to Plaintiffs and the other Class members and have violated the statutory
16 rights due to them under the Magnuson-Moss Act.

17 130. THEREFORE, Plaintiffs pray for relief as set forth below.

18 **COUNT IX**

19 **(Violations of Section 1962(c) and (d) of**

20 **The Racketeer Influenced and Corrupt Organizations Act)**

21 131. Plaintiffs incorporate by reference and reallege all paragraphs previously
22 alleged herein.

23 132. At all relevant times, Defendants were “persons,” as that term is defined
24 in Section 1961(3) of The Racketeer Influenced and Corrupt Organizations Act (the
25 “RICO Act”), 18 U.S.C. § 1961(3).

26 133. At all relevant times, Defendants have conducted or participated, directly
27 or indirectly, in the management and operation of an “enterprise,” as that term is
28 defined in 18 U.S.C. § 1961(4), through a “pattern of racketeering activity,” as that

term is defined in 18 U.S.C. § 1961(5), thereby damaging Plaintiffs and the other Class members in violation of 18 U.S.C. § 1962(c).

134. At all relevant times, Defendants have conspired to conduct or participate, directly or indirectly, in the management of an enterprise through a pattern of racketeering activity, in violation of 18 U.S.C. § 1962(d).

135. At all relevant times, Defendants did willfully and with the purpose to defraud consumers, engage in fraudulent conduct, including acts constituting wire fraud, in violation of 18 U.S.C. § 1343, by engaging in acts that include the following:

- a. fraudulently representing that the MonaVie Products benefit the immune system;
- b. fraudulently using false and misleading testimonials to support unrealistic claims about MonaVie Products;
- c. fraudulently using the ORAC value of the açai berry to mislead consumers about the antioxidant benefits of MonaVie Products;
- d. fraudulently creating the perception that drinking four ounces of the Products is equivalent to eating 13 common fruits; and
- e. fraudulently using scientifically and statistically unsound studies to support claims regarding the Products.

136. As a result of the foregoing fraudulent activities, Defendants have engaged in a pervasive pattern of unlawful and unfair business practices, causing harm to Plaintiffs and the other members of the Class. Defendants' fraudulent conduct, as described above, constitutes a scheme or artifice to defraud Plaintiffs and the other Class members.

137. In furtherance of and for purposes of executing the above-described fraudulent and illegal course of conduct and scheme to defraud, Defendants, either individually or in combination with themselves, used and caused to be used the Internet to disseminate false, fraudulent, and misleading communications and information, in violation of the wire fraud statute, 18 U.S.C. § 1343.

1 138. Each of the false, deceptive, and misleading misrepresentations and
2 claims that were made in furtherance of Defendants’ scheme to defraud Plaintiffs and
3 the other Class members constitute separate and distinct acts of “racketeering
4 activity,” as that term is defined in 18 U.S.C. § 1961(1).

5 139. The fraudulent and deceptive activities engaged in by Defendants in
6 marketing the MonaVie Products to Plaintiffs and the other Class members involve
7 and affect interstate commerce. Defendants market, sell, and deliver the Products
8 throughout the United States.

9 140. Plaintiffs and the other Class members, by purchasing the MonaVie
10 Products, have been injured in their business or property and, therefore, have standing
11 to sue Defendants and recover damages and the costs of bringing this class action
12 under 18 U.S.C. § 1964(c).

13 141. By virtue of their violations of 18 U.S.C. § 1962(c) and (d), Defendants
14 are jointly and severally liable to Plaintiffs and the other Class members for three
15 times the damages that Plaintiffs and the other Class members suffered as a result of
16 Defendants’ scheme to defraud.

17 142. THEREFORE, Plaintiffs pray for relief as set forth below.

18 **COUNT X**

19 **(Violations of Sections 76-10-1603(3) and (4) of**
20 **the Utah Pattern of Unlawful Activity Act)**

21 143. Plaintiffs incorporate by reference and reallege all paragraphs previously
22 alleged herein.

23 144. At all relevant times, Defendants were “persons,” as that term is defined
24 in Section 76-10-1602(3) of the Utah Pattern of Unlawful Activity Act (“UPUAA”),
25 Utah Code Ann. § 76-10-1602(3).

26 145. At all relevant times, Defendants have conspired to conduct and/or
27 participate in, directly or indirectly, the management and operation of an “enterprise,”
28 as that term is defined in Utah Code Ann. § 76-10-1602(1), through a “pattern of

1 unlawful activity,” as that term is defined in Utah Code Ann. § 76-10-1602(2), thereby
2 damaging Plaintiffs and the other Class members in violation of Utah Code Ann. § 76-
3 10-1603(4).

4 146. At all relevant times, Defendants have conducted and/or participated in,
5 directly or indirectly, the management and operation of an enterprise through a pattern
6 of unlawful activity, thereby damaging Plaintiffs and the other Class members in
7 violation of Utah Code Ann. § 76-10-1602(3).

8 147. At all relevant times, Defendants engaged in acts constituting “deceptive
9 business practices,” as defined in Utah Code. Ann. § 76-10-1602(4)(bb).

10 148. Plaintiffs and the other Class members, by purchasing the MonaVie
11 Products, have been injured in their person or property and, therefore, have standing to
12 sue Defendants under Utah Code Ann. § 76-10-1605(1).

13 149. By virtue of their violations of Utah Code Ann. § 76-10-1603(3) and (4),
14 Defendants are jointly and severally liable to Plaintiffs and the other Class members
15 for two times the damages that Plaintiffs and the other Class members suffered as a
16 result of Defendants’ scheme to defraud.

17 150. THEREFORE, Plaintiffs pray for relief as set forth below.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs demand judgment on behalf of themselves and the
20 Class as follows:

21 A. An Order certifying the proposed Class and the proposed California
22 Sub-Class and Missouri Sub-Class under Rules 23(a), 23(b)(2), and (b)(3) of the
23 Federal Rule of Civil Procedure; appointment of Plaintiffs as representatives of the
24 Class; appointment of Plaintiff Parker as representative of the California Sub-Class;
25 appointment of Plaintiff Harbut as representative of the Missouri Sub-Class; and
26 appointment of Plaintiffs’ undersigned counsel as counsel for the Class;

27 B. An Order declaring that Defendants are financially responsible for
28 notifying Class members of the pendency of this suit;

1 C. An Order establishing Defendants as constructive trustees of the profits
2 that served to unjustly enrich them, together with interest during the period in which
3 Defendants retained such funds;

4 D. For injunctive relief only pursuant to California Civil Code § 1780, as
5 Plaintiffs through this Complaint at this point expressly do not seek any monetary type
6 of relief pursuant to the CLRA;

7 E. An Order providing injunctive relief, pursuant to California Civil Code
8 § 1780(a)(2) and (a)(5) and pursuant to California Business and Professions Code
9 §§ 17203 and 17535, requiring Defendants to:

- 10 1. remove language on the MonaVie Products' packaging
11 representing that the Products strengthen the body's immune
12 system and/or aid the body in fighting against aging or various
13 diseases;
- 14 2. remove language on the MonaVie Products' packaging
15 representing that the Products provide any health benefit that
16 cannot be substantiated by reliable scientific studies;
- 17 3. provide restitution to Plaintiff Parker and the other members of the
18 California Sub-Class; and
- 19 4. disgorge all revenues obtained as a result of Defendants'
20 violations of Utah and California law;

21 F. An Order awarding statutory damages in the maximum amount provided
22 by law;

23 G. An Order awarding monetary damages, including, but not limited to, any
24 compensatory, incidental, or consequential damages in an amount to be determined by
25 the Court or jury, with respect to the common law claims alleged;

26 H. An Order awarding compensatory damages, the amount of which is to be
27 determined by the Court or jury;

28

1 I. An Order awarding punitive damages in accordance with proof and in an
2 amount consistent with applicable precedent;

3 J. An Order awarding interest at the maximum allowable legal rate on the
4 forgoing sums;

5 K. An Order awarding Plaintiffs their reasonable costs and expenses of suit,
6 including their attorneys' fees; and

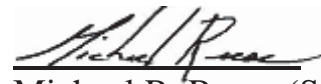
7 L. Such further relief as this Court may deem just and proper.

8 **JURY TRIAL DEMANDED**

9 Plaintiffs hereby demand a trial by jury.

10 Dated: November 12, 2012

REESE RICHMAN LLP

11 

12 Michael R. Reese (State Bar No. 206773)
13 875 Avenue of the Americas, 18th Floor
14 New York, New York 10001
15 Telephone: (212) 643-0500
16 Facsimile: (212) 253-4272
17 Email: mreese@reeserichman.com

18 - and -

THE KREISLER LAW FIRM LLC

19 Brian T. Kreisler
20 P.O. Box 1353
21 O'Fallon, Illinois 62269
22 Telephone: (618) 589-2165
23 Facsimile: (618) 632-5095
24 Email: Brian@kreislerlawfirm.com

Counsel for Plaintiffs and Proposed Class

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Terry J. Hatter and the assigned discovery Magistrate Judge is Oswald Parada.

The case number on all documents filed with the Court should read as follows:

EDCV12- 1983 TJH (OPx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Name & Address:

MONAVIE INC. and MONAVIE LLC
 10855 S RIVER FRONT PKWY
 SOUTH JORDAN UT 84905;
 JUICEY ACAI, LLC
 20652 GELMAN DR, RIVERSIDE CA 92508

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

ADAM PARKER and ANDREW HARBUT, on
 behalf of themselves and all others similarly situated,

PLAINTIFF(S)

v.

MONAVIE, INC.; MONAVIE LLC; and JUICEY
 ACAI, LLC,

DEFENDANT(S).

CASE NUMBER

EDCV12-1983

TJH (OPX)

SUMMONS

TO: DEFENDANT(S):

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Michael R. Reese, whose address is REESE RICHMAN LLP, 875 Avenue of the Americas, 18th Floor, New York, NY 10001. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

NOV 13 2012

Dated: _____

By: _____

JULIE PRADO

Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/> ADAM PARKER and ANDREW HARBUT, on behalf of themselves and all others similarly situated		DEFENDANTS MONAVIE, INC.; MONAVIE LLC; and JUICEY ACAL, LLC	
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Michael R. Reese (SBN 206773), REESE RICHMAN LLP, 875 Avenue of the Americas, 18th Floor, New York, NY 10001, (212) 643-0500; and Brian T. Kreisler, THE KREISLER LAW FIRM LLC, O'Fallon, Illinois.		Attorneys (If Known) (Unknown)	

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:33%; border: none;"> Citizen of This State Citizen of Another State Citizen or Subject of a Foreign Country </td> <td style="width:33%; border: none; text-align: center;"> <table style="border: none;"> <tr> <td style="border: none;">PTF</td> <td style="border: none;">DEF</td> </tr> <tr> <td style="border: none;"><input checked="" type="checkbox"/> 1</td> <td style="border: none;"><input type="checkbox"/> 1</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> 2</td> <td style="border: none;"><input type="checkbox"/> 2</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> 3</td> <td style="border: none;"><input type="checkbox"/> 3</td> </tr> </table> </td> <td style="width:33%; border: none;"> Incorporated or Principal Place of Business in this State Incorporated and Principal Place of Business in Another State Foreign Nation </td> </tr> <tr> <td style="border: none; text-align: right;"> <table style="border: none;"> <tr> <td style="border: none;">PTF</td> <td style="border: none;">DEF</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> 4</td> <td style="border: none;"><input type="checkbox"/> 4</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> 5</td> <td style="border: none;"><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> 6</td> <td style="border: none;"><input type="checkbox"/> 6</td> </tr> </table> </td> <td style="border: none;"></td> </tr> </table>	Citizen of This State Citizen of Another State Citizen or Subject of a Foreign Country	<table style="border: none;"> <tr> <td style="border: none;">PTF</td> <td style="border: none;">DEF</td> </tr> <tr> <td style="border: none;"><input checked="" type="checkbox"/> 1</td> <td style="border: none;"><input type="checkbox"/> 1</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> 2</td> <td style="border: none;"><input type="checkbox"/> 2</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> 3</td> <td style="border: none;"><input type="checkbox"/> 3</td> </tr> </table>	PTF	DEF	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Incorporated or Principal Place of Business in this State Incorporated and Principal Place of Business in Another State Foreign Nation	<table style="border: none;"> <tr> <td style="border: none;">PTF</td> <td style="border: none;">DEF</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> 4</td> <td style="border: none;"><input type="checkbox"/> 4</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> 5</td> <td style="border: none;"><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> 6</td> <td style="border: none;"><input type="checkbox"/> 6</td> </tr> </table>	PTF	DEF	<input type="checkbox"/> 4	<input type="checkbox"/> 4	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	<input type="checkbox"/> 6	<input type="checkbox"/> 6	
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IV. ORIGIN (Place an X in one box only.) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify): <input type="checkbox"/> 6 Multi-District Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge
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V. REQUESTED IN COMPLAINT: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Check "Yes" only if demanded in complaint.) CLASS ACTION under F.R.C.P. 23: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> MONEY DEMANDED IN COMPLAINT: \$

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) 28 U.S.C. §1332(d) (diversity jurisdiction)
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VII. NATURE OF SUIT (Place an X in one box only.) <table style="width:100%; border: none;"> <tr> <td style="width:16.6%; border: none; vertical-align: top;"> U.S. STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. 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FOR OFFICE USE ONLY: Case Number:

EDCV12-1983

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEETVIII(a). **IDENTICAL CASES:** Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): _____

VIII(b). **RELATED CASES:** Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
- ☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- ☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Ventura County (Plaintiff Parker)	Missouri (Plaintiff Harbut)

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Riverside County (Juicy Acai, LLC)	Utah (MonaVie, Inc. and MonaVie LLC)

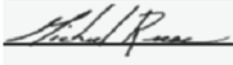
(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.**Note: In land condemnation cases, use the location of the tract of land involved.**

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Ventura County and Riverside County	Missouri and Utah

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):



Date November 13, 2012

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))